N THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 5844 of 2005

Between:

The Kirlampudi Sugar Mills Ltd., Pithapura, E.G. District, represented by its Managing Director Mr. C. Raghuram.

..... PETITIONER

AND

1. The Deputy Commercial Tax Officer, Pithapura, E.G. District.
2. The Commercial Tax Officer, Tuni, East Godavari District.
3. The Deputy Commissioner of Commercial Taxes,

   Near S.R.M.T. Workshop, Main Road, Kakinada,
   East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction more particularly, one in the nature of Writ of Mandamus declaring the notice dated 23-2-2005 issued in Form No. 7 under the Revenue Recovery Act by the 1st respondent as unjustified, illegal and uncalled for in the facts and circumstances of the case and pass such other order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Counsel for the Petitioner: MR.B.SRINIVAS.

Counsel for the Respondents.: GP FOR COMMERCIAL TAXES.

The Court made the following :

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

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WRIT PETITION NO.5844 OF 2005

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ORAL ORDER:

(per the Hon'ble Sri Justice J.Chelameswar)

Present writ petition is filed with the prayer as follows:

"For the reasons stated in the accompanying affidavit, the petitioner prays that the Honourable Court may be pleased to issue an appropriate writ or direction more particularly, one in the nature of Writ of Mandamus declaring the notice dated 23-2-2005 issued in Form No.7 under the Revenue Recovery Act by the 1st respondent as unjustified, illegal and uncalled for in the facts and circumstances of the case and pass such other order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

The respondents issued notice in Form No.7 of the Revenue Recovery Act, proposing to sell a particular house property, which is owned by the petitioner-company, in the process of recovery of certain amount of tax due from the petitioner-company.

We are informed that the tax sought to be recovered is for an amount of Rs.9,19,000/-. The petitioner had earlier approached this Court by way of Writ Petition No.24977 of 2004 and by order dated 18th January 2005 a Division Bench of this Court disposed of the same directing that the above-mentioned tax amount be paid in four installments. Relevant portion of the said order reads as follows:

"…..If the petitioner deposits Rs.2,00,000/- (Rupees two lakhs only) on or before 20.1.2005, the auction scheduled on that day shall stand postponed.

A further sum of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) shall be paid towards the tax within four weeks reckoned from 20.1.2005.

A further sum of Rs.1,10,000/- (Rupees one lakh ten thousand only) shall be paid within four weeks thereafter.

Balance amount towards tax and interest shall be paid within four weeks thereafter….."

Admittedly, 1st installment of Rs.2,00,000/- has already been paid. When it came to the payment of 2nd installment of Rs.2,50,000/-, it appears, the petitioner sought to make the same by way of a cheque, which payment was declined by the 1st respondent herein by his proceedings dated 17-02-2005 on the ground that the said payment is required to be made in cash and construing payment by cheque as not in accordance with the terms imposed by this Court in its earlier order, the respondents, it appears, proposed to sell the above-mentioned property in auction to be held tomorrow i.e., on 29-03-2005. Hence, the present writ petition.

In fact, the matter came up on an earlier occasion on 23-02-2005 and a Division Bench of this Court passed an interim order in W.P.M.P.No.7748 of 2005 to the following effect:

"The petitioner shall make available before this Court a Demand draft for a sum of Rs.3,60,000/- (Rupees three lakhs sixty thousand only) drawn in favour of "The Commercial Tax Officer, Tuni, East Godavari District" for passing further orders in this regard.

Post on 28-03-2005."

When the matter is taken up today, the learned counsel for the petitioner-company placed a demand draft for an amount of Rs.3,60,000/- in favour of the 2nd respondent, obviously in compliance of the orders of this Court dated 22-03-2005. Receipt of the above-mentioned demand draft for a sum of Rs.3,60,000/-, would mean that the orders of this Court dated 18-01-1005 are complied with insofar as 2nd and 3rd installments are concerned. Of course, there is a delay in the remittance of

the amount in terms of the said order.

However, having regard to the fact that the whole process is towards recovery of tax due from the petitioner, we deem it appropriate to direct the respondents to receive the above-mentioned demand draft towards payment due under the 2nd and 3rd installments indicated above and the petitioner is, however, bound by the earlier orders of this Court and is obliged to make the balance of the payment on or before 15-04-2005.

In the circumstances, the proposed sale of the property covered by the above-mentioned notice dated 23-02-2005, is stayed till 15-04-2005 making it clear that in the event of failure on the part of the petitioner to make payment of the last installment before 15-04-2005, the respondents would be at liberty to proceed further in accordance with law.

Writ Petition is disposed of with the above directions. No costs.

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J.Chelameswar, J

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Ghulam Mohammed, J

Note:

Operative portion by wire at parties costs.

(bo)

mrk

28th March 2005.

To

1. The Deputy Commercial Tax Officer, Pithapura, E.G. District.

2. The Commercial Tax Officer, Tuni, East Godavari District.

3. The Deputy Commissioner of Commercial Taxes, Near S.R.M.T. Workshop, Main Road, Kakinada, East Godavari District.

4. Two CCs to the G.P. for Commercial Taxes, High Court of A.P., Hyderabad (OUT).

5. Two CD copies

*Form-NIC-OGS/WP{**RLD**}*

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